

*Case closed by Reviewer  
no protest allowed  
MC 11/8/96*

Internal Revenue Service  
District Director

Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:  
EP/ED

Date: NOV 27 1995

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under

*10/6/95  
RSF*

*MC 11/8/95 DAP 11/22/95*

[REDACTED] [REDACTED] [REDACTED]  
our Conference and Practice Requirements as set forth in  
Section 601.502 of the Statement of Procedural Rules. See  
Treasury Department Circular No. 230.

We have sent a copy of this letter to your representative  
as indicated in your power of attorney.

If we do not hear from you within the time specified, this  
will become our final determination.

Sincerely yours,

[REDACTED]  
District Director

Enclosures: 3

ENCLOSURE

[REDACTED]

The information submitted indicated that you were incorporated on [REDACTED] in the State of [REDACTED]. You filed Form 1024, Application for Recognition of Exemption under section 501(a) on [REDACTED].

Your Articles of Incorporation state that you are organized for the following purposes:

"to promote the social welfare and service the common good and general welfare of its members and to conduct any and all lawful business for which non-profit corporations may be organized under Chapter 273 of the [REDACTED] Revised Statutes, as stated or hereafter amended, to effectuate that purpose."

The Declaration of Covenants and Restrictions provides that the owners of [REDACTED] in its entirety, which consist of lots [REDACTED] through [REDACTED] are [REDACTED]

The Declaration of Covenants and Restrictions purpose is to provide for the mutual benefit of present and future owners of the lots in [REDACTED] a set of imposed easements, covenants and restrictions. Each lot owner shall be a member of the Association, and by acceptance of a deed for any lot agrees to accept membership in, and does thereby become a member of the Association. The initial assessment to each lot shall be no higher than \$50.00 annually.

Your application states, in general, that your organization conducts the following activities:

Enforces Declarations of Covenants & Restrictions and maintains open space, common areas, fences, street lights & entrances.

You indicated that the association does not own any property and the only common area is the entrance. The membership of the homeowner association consists of 5 homeowners and 3 developers with 7 lots currently being sold. The annual assessment of homeowners is \$[REDACTED]/lot. The map of the subdivision submitted includes lots [REDACTED] through [REDACTED] which surrounds the entrance to the subdivision. The owners of these lots are not provided membership into the association.

ENCLOSURE

[REDACTED]

The governing body of the association, which consist of only the developers are:

[REDACTED] Chairman of the Board/President  
[REDACTED] Director  
[REDACTED] Director  
[REDACTED] Secretary/Treasurer

Proposed financial data submitted indicates that for tax year [REDACTED], income will be from 10 lots at \$[REDACTED] a lot. Only \$[REDACTED] will be spent towards activities related to organization's organized purposes.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. Section 501(c)(4) of the Code provides, in part, for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states that a civic league or organization may be exempt if:

- (i) It is not operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-(a)(2) of the Regulations states in general that:

- (i) An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

ENCLOSURE

- [REDACTED]
- (ii) The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Revenue Ruling 74-17, 1974-1 C.B. 130, provides that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption.

Revenue Ruling 74-99, 1974-1 C.B. 131, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The ruling states that three elements must be satisfied:

- 1) it must serve a "community" that bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and,
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The ruling also states that a "community", within the meaning of section 501(c)(4) of the Code, is not merely "an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of real estate subdivision and the sale and purchases of homes therein". The term as contemplated in the Code "has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof".

ENCLOSURE

[REDACTED]

[REDACTED]

membership is limited to lot owners of [REDACTED] subdivision and its primary activity is the enforcement of the Declaration of Covenants and Restrictions. Item (15) of the Declaration of Covenants provides the lot owners are to keep their grass properly cut and to remove weeds and trash in order to maintain a neat appearance. If the lot owners fail to maintain their lot neat in appearance, then the Developer may take actions at lot owner's expense in order to make the lot neat and attractive. In this respect [REDACTED] does not meet the criteria of Rev. Rul. 74-99, in that it does not constitute a community. And, the exterior maintenance activities reinforce the prima facie presumption that the organization is operated essentially for private benefit. Based on the above facts and upon the applicable law and precedent, we have determined that [REDACTED] fails to qualify for exemption under section 501(c)(4) of the Code.